

# The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

---

No. 192 ] NEW DELHI, TUESDAY, JULY 21, 1953

---

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 6th July 1953

**S.R.O. 1427.**—Whereas the election of Shri Suganchand, as a member of the Legislative Assembly of the State of Rajasthan, from the Begun constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Laxmidatta *alias* Lakhmichand, son of Badrilal Bilu, residing at Begun District Chittorgarh and Shri Gopivallabh, son of Damodarji Bhatt, residing at Begun, District Chittorgarh;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KOTA

CORAM:

Shri P. D. Pande—*Chairman*.

Shri J. P. Mathur—*Member*.

Shri Bishan S. Darbari—*Member*.

ELECTION PETITION No. 132 of 1952

1. Shri Laxmidatta *alias* Lakhmichand son of Badrilal Bilu residing at Begun, District Chittorgarh;
2. Shri Gopivallabh son of Damodarji Bhatt residing at Begun, District Chittorgarh—*Petitioners*.

*Versus*

1. Shri Madanlal Dhupar son of Dhupar residing at Udalpur Dhanmandi, House No. 249, Ward No. 8;
2. Shri Mithalal son of Gokulji Dashora residing at Udalpur Motichohatta, Dashoran-ki-Gali;
3. Shri Suganchand son of Pannalal Luharia of Begun, District Chittorgarh (Rajasthan)—*Respondents*.

## COUNSEL:

Shri Ram Swaroop, Shri Inderlal Gobhil, Shri Bhanwarlal Vyas, Shri R. C. Pancholi and Shri Bharat Raj for the Petitioners, and Shri Nathu Lal Jain for Respondent No. 3.

## JUDGMENT

This is an election petition virtually engineered by the defeated Independent Candidate, Shri Mithalal (Respondent No. 2). Two of alleged voters *viz.* Shri Laxmidatta and Shri Gopivallabh have been made to file it as so-called petitioners. Out of them the first was also the election agent of Shri Mithalal.

The petition is designed to challenge the election of the successful Congress candidate Shri Suganchand (Respondent No. 3) to the Rajasthan Legislative Assembly from Begun Constituency in February 1952.

It appears that there were 5 candidates at the election *viz.* the three respondents and two others, namely Laxmichand Dhaka and Sunderlal Azad of both of whom the nomination papers were rejected.

The main grounds of attack as taken up by the Petitioner may briefly be summarized as follows without giving the instances therefor, which will be more aptly discussed while determining those grounds:—

(a) There was a non-compliance with the statutory provisions of the Representation of the People Act 1950, because—

- (i) no notices in Forms I and III were published for Begun Tehsil as required by the Preparation of Electoral Rules 1950,
- (ii) there was no preparation of the Electoral Rolls as enjoined by Section 22 of the Representation of People Act 1950 read with Notification No. 24/50 Elec. 23, dated 29th October, 1950 issued by the Election Commission, and,
- (iii) there was no publication of the draft electoral rolls by the Sub-Divisional Officers of Chittorgarh and Begun for a period of 21 days as required by the Rule 9 of preparation of Electoral Rolls Rules 1951 and Circular letter No. 2127, dated 20th November, 1950 of the Election Commission.

(b) The practice and procedure followed for recording votes infringed the secrecy of the ballot and destroyed the confidence of the voters in that secrecy.

(c) The return of election expenses as submitted by the Respondent Suganchand has not been examined and certified by the Returning Officer to be in the manner required and is also defective in as much as it does not—

- (i) contain full description of receipts or value of free services received from persons named in Appendix A,
- (ii) improperly show in the receipts the costs of printing of pamphlets and posters supplied to him by the Congress party but for which he has made no payments,
- (iii) disclose the names of the payees in parts A and D of the prescribed form which parts also contain false and fictitious entries in material particulars, and,
- (iv) indicate all the expenses incurred.

The petitioners submit that all the aforesaid alleged omissions in the preparation and publication of electoral roll, irregularities in recording votes in a manner leading to the infringement of secrecy and defects in the return of election expenses have affected the election materially and the alleged false return of election expenses also disqualifies Respondent Suganchand for being a member of the Rajasthan Legislative Assembly. They accordingly pray that it might be held—

- (a) that the election of Shri Suganchand is void,
- (b) that he is disqualified to be a member of the Rajasthan Legislative Assembly, and
- (c) that he should pay costs of the petitioners.

It may be noted that on 6th January, 1953 the petitioners filed an application at page 40 that the election petition be amended by adding certain allegation as regards candidate Sunderlal whose nomination paper had been rejected. This application was rejected by us on 6th February 1953, *vide* "Annexure."

Respondent No. 1 has remained absent and so we have proceeded *ex parte* against him. Respondent No. 2 has filed his written-statement but naturally enough, as he is the real petitioner in the garb of a respondent, he has gone the whole hog with the petitioners. Respondent No. 3 has, however, contested the petition. He has denied all the allegations inclusive of their being voters as made by the petitioners and has asserted that there was a valid publication of the electoral rolls at Begun. He has further pleaded that the petition is liable to be summarily rejected for non-compliance with Section 83(2) of the Representation of People Act of 1951, as also, because, the grounds taken up by the petitioners for the setting aside of the election are not by Section 100 of the same Act. According to him the preparation of the electoral roll cannot be questioned in the election petition and the petition is not *bonafide* and is champertous.

In view of the above pleadings the following issues were framed:—

1. Were petitioners voters for the Rajasthan State Assembly from Begun Constituency?
2. Have the petitioner failed to comply with the provisions of Section 83(2) of the Representation of the People Act of 1951, and if so, should the petition be summarily rejected on that account?
3. Did the practice and procedure followed for recording votes infringe the secrecy of ballot, and if so, did any of the electors refrain from voting for fear of being detected for whom they were voting and has the result of the election been accordingly affected materially as against Respondent No. 2?
4. Are the petitioners competent to question the Electoral Roll at this stage and if so is the Roll defective in the sense of materially affecting the election?
5. Were the electors not given an opportunity to get themselves registered as electors and then exercise their franchise in favour of Respondent No. 2?
6. What were the instructions contained in the circular letter No. 2127, dated 20th November 1950 and were those instructions not followed by the S. D. O's. (S. D. Ms'?) of Begun and Chittorgarh? If so, does the non-compliance affect the election materially?
7. Were notices in Forms I & III (of the Election Rules of 1950) not published for Begun Tehsil by the Chief Electoral Officer of the State? If not, how is the election affected?
8. (a) Has Respondent No. 3 not lodged the return of his election expenses in the prescribed manner?  
(b) Is that return false in material particulars and so amounts to corrupt and thereby disqualifies Respondent No. 3 from becoming a member of the Rajasthan Legislative Assembly?  
(c) Has the return not been examined and duly certified by the Returning Officer and if so with what result?
9. Is the petition not *bonafide* and is champertous?
10. To what relief, if any, are the petitioners entitled?

#### FINDINGS

**Issue 1.**—The question raised by this issue is as to whether or not the Petitioners were voters for the Rajasthan Legislative Assembly from Begun Constituency. This question has to be answered in the affirmative, because, in the Electoral Roll Ex. I for Begun, Petitioner Laxmidutta who is entered as Laxmichand is shown as a voter at Serial No. 748 and in Electoral Roll Ex. II, Petitioner Gopivallabh is again entered as a voter at Serial No. 723. It may be noted that although, in Ex. II the name of Gopiballabh's father is recorded as Damoshwarlal, the latter is the same person as is also known as Damodarji Bhatt and Gopivallabh also called Gopilal (Vide P.W. 1).

**Issue 2.**—In para. 6 of the petition, there is a charge of corrupt practices in the matter of the return of election expenses and therefore in keeping with the requirements of Section 83(2) of the R. P. Act, the petition should have been accompanied by a signed and verified list setting forth full particulars of the alleged corrupt practices including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such corrupt practice.

The petitioners have undoubtedly given particulars of the corrupt practices in sub-paragraphs 6A to 6F of the petition which has been duly verified but the petition is not accompanied by any signed and verified list of those particulars as required by Section 83(2) of the R. P. Act 1951. In these circumstances, acting under Section 90(4) of the Act and relying on the decision of the Lucknow Tribunal in E.P. No. 256 of 1952 (Radhey Shyam Sharma Vs. Shri Chandra Bhan Gupta and others), *Gazette of India* No. 142, dated 3rd June 1953, p. 1830 at p. 1839, we order that all the allegations as contained in para 6 of the petition in regard to the return of Respondent No. 3's election expenses shall be ignored and the evidence led by the petitioner in support of the alleged corrupt practices shall be left out of consideration. We may add that we have not thought it fit to reject the petition whole-sale, because, justice requires that other allegations made in the petition as regards the violation of secrecy and non-compliance with the Provisions of the Constitution or of other Acts or rules or orders relating to election, have to be considered on their merits. We decide the issue accordingly.

**Issue 3.**—The Petitioners allege that the procedure followed for recording votes was that, as soon as, a voter came he was given an identity-slip and after his identity was established, the Polling officer in charge of the ballot papers would boldly underline in ink the entry or part of the entry relating to the elector and would also prolong the line to the margin. He would then note down legibly and in ink the serial number of the ballot paper or papers supplied to the voter above the aforesaid line but at the same level with the entry relating to the elector in the Roll.

As an illustration of this procedure, petitioner Shri Laxmidutta (P.W. 1) has referred us to the serial number Ex. IV of his ballot paper as noted down in the Electoral Roll Ex. III.

According to the Petitioners, the result of the above procedure was that all confidence in the secrecy of the ballot was destroyed, in so far as, the polling or election agents, or the candidate himself, who happened to be present inside the polling station, could easily know the serial number of the ballot-paper issued to a voter, and could at the time of counting, check up and discover the name of the voter as also of the candidate for whom he had voted. Petitioner Laxmidutta alleges that about 40 to 50 people did not cast their votes at Motimukkan-ka-khera for fear of being detected, but, he cannot mention the name of even one of them. Respondent Shri Mithalal (P.W. 2) states that many of the voters went away without casting their votes, because, they said that they were likely to be found out and were, therefore, not prepared to incur the displeasure of any particular party, and that most of those people consisted of Government officers, traders dealing with the Controlled commodities and Muslims. This statement of his, however, gets considerably weakened by his own admission that he did not personally see any of Respondent No. 3's election or Polling agents noting down the numbers of the Ballot-papers. Nor did any of his own agents tell him that Respondent No. 3's agents had been noting down such numbers.

In our opinion, the procedure adopted was not only justified by Rule 23(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 which enjoins that the Polling Officer shall keep a record of the serial numbers of the ballot papers supplied to the electors, but is also in keeping with the written instructions issued to Polling and Presiding officers as regards the procedure to be adopted for the issue of ballot papers (*vide* Ex. XXXVII).

Again, the result as contemplated by the Petitioners is too far fetched to be seriously considered as destroying the secrecy of the ballot, because, the petitioners have failed to satisfy us that the procedure in question was either legally objectionable or that it had so violated the secrecy of the ballot that any of the voters had actually refrained from voting for fear of being ultimately found out. We accordingly decide the whole of the issue in the negative.

**Issue 4.**—The primary objection as raised by the contesting Respondent No. 3 under this issue is that the Electoral Roll of Begun constituency cannot be questioned at this stage i.e. at the stage of the election-petition.

In support of the above objection, the learned counsel for the Respondent has referred us to Section 62 of the R.P. Act of 1951 and has argued that the Electoral Roll is final and conclusive. The above argument though sound in itself, is beside the point, in so far as, the facts in issue are concerned. In the Prembroke

Borough case (5 O'M and H page 135) following *Stowe Vs. Jollife* (9 L.R.C.P. page 734) *Darling J.*, observed:—

"And when you say that the register (here the final electoral Roll) is conclusive, as has been often said, what you mean is this, that it is conclusive that the people who are on it have qualifications which entitle them to be there".

Therefore, when the Petitioners point to the two glaring or patent defects in the Electoral roll firstly as regards almost all of the women voters who, although, on the roll, were disallowed to vote, owing to the misdescription of their names, and secondly, as regards some village, which according to them are improperly missing from the roll, they do not, at least in case of their first objection, attack the alleged conclusiveness of the roll but rather wish to indirectly confirm it. Their second objection again, does not question the conclusiveness of the roll but points to its incompleteness, in so far as, some villages, which should have been, but have not been, included in the roll. Therefore, it is clear, that when we proceed to consider the electoral roll in the light of the two defects pointed out to us by the Petitioners, we do not mean to interfere with the finality of the electoral roll but only desire to test its merits, and we have no doubt that we are competent to do so.

As regards the women-voters Petitioner Shri Laxmidatta (P.W. 1) states on oath that at many of the polling stations of the Tehsils of Begun and Gangrar where he was personally present, a number of women voters were unable to vote because their personal names did not appear in the Electoral Rolls in which they were only respectively described as the wives of their husbands. He says that this happened mostly at all the polling stations and especially at Begun, Bassi, Saldas and Surajnas where, according to him, 500, 500, 250 and 95 women voters were respectively not allowed to vote. In his cross-examination, he cites concrete instances and says that the wives of Shiva Narain Sunar, Girdhari Bhatt, Bansilalji Bhatt and Damodarlal Acharya and many other women were unable to vote on account of the misdescription in the Electoral Roll. To illustrate his contention, he cites Ex. V at page 14 in which the wives of Girdhari and Shivnaran are entered as Dharampatni Girdhari and Dharampatni Shiv Narain respectively.

Another witness produced by the Petitioners in regard to the women voters is Shri Narendra Singh (P.W. 6). This witness deposes that he had checked up the Electoral Roll of village Bassi and had found that about 900 female voters were unable to vote because their own names were not entered in the Rolls but they were described as the wives of so and so.

The third and most important witness examined by the Petitioners is Shri Girdhari Singh (P.W. 8) who acted as the Presiding Officer of seven Polling stations and states that he had written instructions that in case of women voters if their personal names were missing from the Electoral Roll, and they were merely shown as Shrimati so and so all the entries about them should be scored off and they may not be permitted to cast their votes and that in compliance with the said instructions he must have struck off about 200 to 300 such names in connection with the 7 Polling stations. This witness has however been unable to mention the original source from which the instructions had emanated. He says he personally had received them from the S.D.O. of Begun. We do not much care about the source but the instructions were improper in the sense that they militated against the provisions of Article 326 of the Constitution as regards adult suffrage and operated to disfranchise most arbitrarily a vast majority of women voters, who being already on the Roll, were entitled to cast their votes in terms of Section 62 of the R.P. Act.

The second defect to which our attention has been drawn by the learned counsel for the petitioners, refers back to para 5(a) to(e) of the election petition. It is alleged that, although, the names of the voters of the 8 villages in Tehsil Gangrar and 6 villages in Tehsil Begun did not appear in the Draft Electoral Roll, a few such names came ultimately to be included in the Final Roll for reasons unknown to the Petitioners. Generally speaking, some difference between the Draft and Final Electoral Rolls is a matter of common occurrence but, in order to satisfy ourselves on the merits of the Petitioners' contention, we propose to discuss the relevant facts in regard to the aforesaid 14 villages.

The first lot of 8 villages falls in Tehsil Gangrar. The villages concerned are: (1) Samlia (2) Dhualla (3) Salaria (4) Jawasia (5) Jawasia-ka-khera (6) Aking-pura (7) Raipuria, and (8) Gopalpura. As regards these eight villages, the Petitioners have substantiated their allegation that the names of the voters thereof did not appear in the Draft Electoral Rolls by producing the consolidated bundle

Ex. XXI from which the Draft Electoral Rolls of the aforesaid 8 villages are missing. It does, however, appear that the Final Rolls for villages Salaria, Jawasia-ka-kheira and Gopalpura were prepared. They are Exs. XXIV, C2 and C1 respectively. But even in regard to these villages we cannot follow how the final Rolls happened to be prepared when the Preliminary ones were not forthcoming. At any rate, the non-preparation of the Draft Electoral Roll for the aforesaid 8 villages of Tehsil Gangrar is not an omission which may be lightly overlooked but 3 of the Representation of the People (Preparation of Electoral Rolls) Rules 1950 lays down most authoritatively that there shall be prepared for every constituency an electoral roll in which shall be included the names of all persons appearing to be entitled to be registered therein." In our opinion, this provision is as mandatory as it could be and that non-compliance with it must lead us to the enquiry as to whether or not the result of the election has been materially affected.

As regards the remaining six villages viz., (1) Ruppura (2) Chachpur (Dhamancha) (4) Motikhhera (5) Badanpura and (6) Kalawad lying in Tehsil Begun on which also the Petitioners have built their election petition, we regard it necessary to discuss below each individual village separately:—

- (1) *Ruppura*.—In the draft Electoral Roll Ex. XXII there were 125 voters but in the final one Ex. XXIII the number was reduced to 55 and 3 more were subsequently added. Respondent Mithalal says he is unable to explain the reduction but adds that those voters whose names had been removed were his voters. But his want of ability to explain the reduction does not necessarily mean that the reduction was improper and his statement that the voters whose names had been removed were his supporters may be nothing more than a mere conjecture. We cannot therefore give him credit for any Ruppura votes.
- (2) *Chachpur*.—According to P.W. 1, about 30 to 35 people had come to vote from this village. None of them could obviously vote because the final electoral roll was not available (*vide* Ex. XX).
- (3) *Dhamancha*.—This village originally lay in Madhya Bharat but at the time of election it formed part of Tehsil Begun in Rajasthan. The Madhya Bharat Government was accordingly asked for a Draft Electoral Roll for Dhamancha but they sent one for village Dhamania. There was thus no Draft Electoral Roll for this village. Nor was any Electoral Roll prepared (*see* Ex. XXV). Ultimately, on 5th January 1952, the Chief Electoral Officer advised the District Electoral Officer Chittorgarh that the village be treated as missing (*vide* Ex. C7). About 50 to 65 voters from Dhamancha had come to give their votes but their names being missing from the electoral Roll, they were not allowed to vote (*vide*, P.W. 1).
- (4) *Motikhhera*.—There was no final electoral roll prepared for this village. P.W. 1 cannot however give the number of voters who had come to vote from Motikhhera. But all the same the irregularity about the non-preparation of the Final Electoral Roll was there.
- (5) *Kalawad*.—From this village about 80 voters had turned up but they were unable to give their votes obviously because the Final Electoral Roll was not available (*vide* P.W. 1).
- (6) *Badanpura*.—It is not known how many voters had come to vote from Badanpura but the fact remains that there was no Final Electoral Roll available for this.

It may further be noted that Respondent Mithalal says that he lost about 100 votes relating to village Jawalionka-kheira in Tehsil Gangrar, because, at first the telegram Ex. XXVI was received on 21st December 1951 from the Chief Electoral Officer saying that the village be ignored as missing but later on, 22nd January 1952, only about 15 to 20 votes were recorded in his favour, because, he could not get hold of other voters due to short notice received.

Now, the only question which remains to be discussed under this issue is as to whether or not the facts mentioned above are sufficient to affect the election materially. But, since a similar question, though based on different facts has been raised by issue No. 6 as well, we reserve the question to be fully discussed while deciding issue No. 6.

*Issue 5*.—There is absolutely no evidence on behalf of the petitioners to justify the conclusion that the electors were not given an opportunity to get themselves

registered as electors. It is true that under Rule 4 of the Representation of People (Preparation of Electoral Rolls Rules, 1950, every person who may be eligible to be registered as a voter is entitled to have his name included in the Electoral Roll of the relevant constituency. It is also true that notices inviting applications for registration have to be issued by the Electoral Officer of the State concerned. But the petitioners have failed to prove that no such notices were issued. The presumption, therefore, under Section 114 of the Indian Evidence Act is that the notices must have been issued. The issue is accordingly decided against the petitioners.

*Issue 8.*—The circular letter No. 2177 dated 20th November 1950 is on the file, and copies thereof, have been marked as Exs. VI and VII. It relates to instructions issued by the Deputy Electoral Office of Udaipur and Kotah Divisions to the Collectors, Sub-Divisional Officers and Tehsildars. The first copy is addressed to the S.D.O. of Begun and the second to the S.D.O. of Chittorgarh. The subject matter of the circular letter is the publication of the Preliminary Electoral Rolls at the Head quarters of a District, Tehsils and so far as possible, at each village and the period of publication is 21 days.

The contention of the Petitioners is that neither of the two S.D.Os. of Begun and Chittorgarh published the Preliminary Electoral Rolls as required by the circular letter. With reference to this contention, we have looked into the relevant documents Exs. XXXI to XXXIII and Ex. XI and XII which appertain to Tehsil Bhainsrorgarh, Exs. XIII, XIV, XVI & XVII which refer to the S.D.O. of Begun as also to Exs. XV, XVI, C-3 & XIX which relate to the S.D.O. or Tehsildar of Chittorgarh. A perusal of all of these documents satisfies us that the formalities regarding the publication of the Draft Electoral rolls were certainly undergone at least in respect of the Rolls which had actually been received. We may note further that in face of these documents we have not found it possible to accept the oral statements of Petitioners witness Nos. 3, 4, 5, 7, & 9 that there was no publication of the Rolls. At all events, the negative evidence of these witnesses is insufficient to destroy the presumption under Section 114 Illustration (e) that the authorities charged with the duty of the publication of the Rolls had duly performed it in the manner laid down. We accordingly decide the first portion of the issue against the Petitioners.

Now we turn to the question as raised by the Second portion of this issue and issue 4 as to whether or not the election has been materially affected because—

- (a) the majority of the women-voters were not allowed to vote
- (b) Village Dhamancha was ignored and about 50 to 65 voters from that village were unable to vote, and
- (c) Some voters of village Jwalion-ka-khera were unable to vote as at first it was ordered that the village be ignored and subsequently some 15 or 20 of the voters who had turned up were allowed to vote in favour of Respondent Mithalal.

The election law in India is clear on the point that if there has been a non-compliance with the Rules, the Petitioner must himself prove that the result has been materially affected *vide* Section 100(3) (c) of the R.P. Act of 1951. This means that the election cannot be said to be materially affected unless the irregularities which have occurred have actually turned the scale in favour of the returned candidate.

Now the position is that Respdnt Shri Mithalal has been admittedly defeated by 1284 votes. The question is as to whether he has succeeded in establishing that but for the alleged irregularities, Respdnt. Shri Suganchand would not have been able to defeat him. This question, we are afraid has to be decided against Shri Mithalal, because, although in the course of his evidence he tried to build up his case with reference to certain positive figures in regard to the votes which he had lost on account of the irregularities, the task was so difficult that there was a sudden collapse.

The above figures were given out by the Petitioner Laxmidatta (P.W. 1) and Respdnt. No. 2 himself as P.W. 2. According to these two witnesses about 20 to 40 voters from village Samlia, about 200 from Jawasla-ka-khera, Aklingspura Raipuria & Gopalpura, about 50 to 65 from Dhamancha about 80 voters from Jawalion-ka-khera and about 80 voters from Kalawad were unable to vote. The maximum total of these figures comes to 465 only. The petitioners have failed to give the number of voters of other villages, who could not cast their votes. So, it is clear that the above total of 465 is too small as against 1284 votes by which Respdnt. Shri Mithalal has been defeated.

Much stress has, of course, been laid on the fact that the following women voters were also unable to vote:—

At Begun—500

at Bassi—900

at Saddas—250

at Surajnia—95 and

at 7 other polling stations 200 to 300 (*vide*, P.W. 8). No attempt has, however, been made to give the number of other women voters at other places or even the total number of such voters in the whole of the Constituency. It may be conceded that the total number must certainly have been considerably large but there is no allegation that the misdescription having applied to all of them, all were unable to vote, nor is there any proof that all of the women voters who were not allowed to vote would have certainly voted in favour of Respd. Mithalal. In fact, the subject of women voters and petitioner evidence thereon are very clear improvements on the election petition and even if a large number of such voters were not allowed to vote, it may be safely assumed that Respdts. 2 & 3 probably suffered almost equally.

In view of all these circumstances, it has become impossible to hold that but for the irregularities complained of, Respd. Mithalal would have added more than 1284 voters to the list of voters who had actually voted for him. Therefore under the second portion of issues 4 & 6 our decision is that that the result of the election has not been materially affected.

*Issue 7.*—The documents Exs. C4 & C5 prove it beyond any doubt that notices in Forms I & III were duly published. The first portion of the issue is decided in the affirmative and so the second portion of the issue does not arise.

*Issue 8.*—In view of our decision under issue 2, the whole of this issue is left unconsidered.

*Issue 9.*—We have no manner of doubt that the petition is Benami for Respd. Mithalal and that the latter has not only instigated it but has also run the whole show. But, these facts do not destroy the statutory right of the petitioner to file the petition (*vide* our decision on issue 1 as also Sec 83 of the R.P. Act of 1951 and I.E.C. Doabia vol. II p. 35). In these circumstances and also because, Respd. No. 3 has led no evidence to show that the petition is not bonafide and is champertous we decide the issue against him.

*Issue 10.*—Since the petitioners have failed to establish that the election in question has been materially affected, we hold that they are entitled to no relief.

#### ORDERED

Let the election petition stand rejected but in view of the many irregularities which have been brought to light by means of the present petition, we order that the Petitioner, Respd. 2 and the contesting Respd. No. 3, shall bear their own costs.

The 29th June 1953.

(Sd.) P. D. PANDE, *Chairman.*

(Sd.) J. P. MATHUR, *Member.*

(Sd.) BISHAN S. DARBARI, *Member.*

#### ANNEXURE

#### BEFORE THE ELECTION TRIBUNAL, KOTA

#### CORAM:

- (1) Shri P. D. Pande.
- (2) Shri J. P. Mathur,
- (3) Shri B. S. Darbari.

#### ELECTION PETITION No. 132 OF 1952.

- (1) Laxmidatta Alias Lakhmichand son of Badrilal Bilu Residing at Begun, District Chittorgarh.
- (2) Govdallabh son of Damodarji Bhatt residing at Begun, District Chittorgarh—*Petitioners.*

#### Versus

- (1) Madanlal Dhupar, son of Dhupar residing at Udaipur, Dhanmandi, House No. 249, ward No. 8,



- (2) Mithalal son of Gokulji Dashora residing a Udaipur, Motichohatta, Dashoram-KI-gali,  
 (3) Suganchand son of Pannalal Luharia of Begun, District Chittorgarh (Rajasthan)—*Respondents*.

#### ORDER ON PETITIONER'S APPLICATION AT PAGE 40

This is an application for amendment of the election petition by adding to it the allegation that in as-much-as the nomination paper of one Shri Sunderlal, who is not a party to the present case was improperly rejected by the Returning Officer on the 28th of November, 1951, that improper rejection constitutes a material irregularity and is by itself sufficient to avoid the election.

It is stated that the petitioner came to know of the above fact only recently and had no knowledge of it when they filed the Election petition.

In our opinion, the application has no force and should be rejected on the following grounds:—

1. The election took place in January, 1952 and on the 2nd of February, 1952 the Respd. No. 3 was declared duly elected. The present election petition was filed on the 14th of April, 1952 and therefore between the 2nd of February and 14th of April 1952, there was more than sufficient time for the Petitioners to make themselves acquainted with the actual reason for which Shri Sunderlal's nomination paper was rejected. They did not apparently exercise due diligence in making the necessary inquiry about the rejection from the election office but admittedly went about beating the bush (*vide*, affidavit at p. 42).

2. The Election Petition was filed on 14th April 1952 and the present application for amendment as filed on 16th January 1953 comes too late and cannot therefore be allowed.

3. The amendment sought is not only necessary to decide the real points of controversy between the parties but seeks to bring in a new and far-reaching allegation which was not pointed at by the election petition.

4. We have to see that the Petitioners are not allowed to bring in any fresh charge after the expiry of the statutory period of limitation and thus cause unnecessary embarrassment to the opposite party.

5. We are doubtful if we have any jurisdiction under the R.P. Act of 1951 to allow any material amendment of the Election petition as suggested by the Petitioners. Section 83(3) does not apply because it relates to the amendment of particulars and not of election petition and sec. 90(2) refers to the trial of an election petition and not to the petition itself. Further, there is no provision anywhere in the Act or the Rules for the amendment of a petition, so as to, introduce a new and substantive point of attack.

The result is that the application stands rejected.

(Sd.) P. D. PANDE, *Chairman*.

(Sd.) J. P. MATHUR, *Member*.

(Sd.) BISHAN S. DARBARI, *Member*.

[No. 19/132/52-Elec.III/10988.]

**S.R.O. 1428.**—Whereas the election of Shri Damodar Lal Vyas, as a member of the Legislative Assembly of the State of Rajasthan, from the Malpura constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Seth Bhanwar Lal Sogani son of Seth Jamnalalji, Rasta Motisingh Bhomia, Jaipur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, KOTA

CORAM:

Shri P. D. Pande—*Chairman*.

Shri J. P. Mathur—*Member*.

Shri Bishan S. Darbari—*Member*.

## ELECTION PETITION No. 229 of 1952

Seth Bhanwarlal Sogani son of Seth Jamnalalji by caste Jain of Jaipur Rasta Motisingh-Bhomia—*Petitioner*.

*Versus*

1. Shri Damodar Lal Vyas son of Shri Brij Lal, Advocate resident of Malpura, District Tonk.
2. Shri Pannalal son of Shri Hazarilal, by caste Mahajan, resident of Malpura, District Tonk.
3. Shri Jagannath Patel Socialist Party, resident of Diggi, District Tonk.
4. Shri Chandbehari Lal son of Shri Nathulal, Advocate resident of Malpura, District Tonk—*Respondents*.

## COUNSEL:

Shri U. M. Trivedi, Shri Sital Prasad, Shri Ram Swrup, Shri Kanhaiya Lal Saxena and Shri Birendra Prasad Agrawal for the Petitioner and. Shri Pana Chand Jain Shri Nathulal Jain, Shri Ramesh Chandra, Shri Brij Sunder. Shri Niranjan Nath and Shri Inder Nath Gobhil for Respdt. No. 1 and Shri Nathu Lal Jain for Respdt. 4 also.

## JUDGMENT

The Petitioner seeks to avoid the election of the Congress candidate, Shri Damodar Lal Vyas (Respdt. No. 1), as published in the Rajasthan Raj Patra dated 13th February 1952, to the Rajasthan Legislative Assembly, from the Malpura Constituency (District Tonk), on the simple ground that the petitioner is a duly qualified elector to the Assembly and was also a Ram Rajiya Parishad candidate but his nomination paper was illegally and improperly rejected by the Returning Officer on 28th November 1951, and so, the result of the election has been materially affected.

It appears that for the aforesaid seat these were the following candidates on behalf of the parties noted in brackets against the names of each:—

- (1) Petitioner (Ram Rajiya Parishad)
- (2) Respondent 1 (Congress)
- (3) Respondent 2 (Jan Sangh)
- (4) Respondent 3 (Socialist)
- (5) Respondent 4 (originally Independent but subsequently Congress)
- (6) Kunwar Narain Singh (Ram Rajiya Parishad).

The nomination paper of No. (1) was rejected on 28th November 1951 and that of No. (6) on 29th November 1951 with the result, that nos. (1) to (4) went to the polls and No. (2) was ultimately elected.

The petitioner had filed two nomination papers on 26th November 1951. The first is Ex. IV and the second is Ex. II. In both of them he had chosen the following symbols in order of preference:—

- (1) Rising Sun.
- (2) Elephant, and
- (3) Lion.

Both of these nomination papers were rejected by the Returning Officer, the first i.e. Ex. IV on the ground that amongst the symbols chosen the symbol of the 'Lion' was not 'manzoor shuda' and the second nomination paper Ex. II was rejected on the additional ground that the Proposer and Seconder to that paper were the same as those to Ex. IV.

The petitioner pleads that the Returning Officer had no jurisdiction under Sec-36(2) of the Representation of People Act 1951 to reject the nomination on the aforesaid trivial and minor mistakes particularly when the Petitioner was a candidate of Ram Rajiya Parishad party and the first symbol of his choice viz. 'Rising Sun' was the symbol allotted to the aforesaid party and there was no other candidate at the said election offering 'Lion' as his symbol, and the nomination paper was in substantial compliance of the Act.

It is for the above reasons that the petitioner has asked that the petition be allowed with costs and the election of Respdt. No. 1 be declared to be wholly void and he be unseated and fresh election be ordered.

Respondents 1 and 4 have contested the claim, while Respondents 2 and 3 have remained absent. According to both the contesting Respondents the nomination paper of the petitioner was correctly and validly rejected and the result of the election has not been materially affected by the rejection. In fact, Respondent No. 1 asserts that the Petitioner had no chance to secure as many votes as were received by Respdt. No. 2, who was Jan Sangh candidate and whom all the candidates, whose nomination papers were rejected, had combined together to support.

Respdt. No. 1 further alleges that under rule 5 of the Representation of People (Conduct of Election and Election Petitions) Rules 1951, it was obligatory for a candidate to make choice of three symbols in order of preference from the list of symbols published by the Election Commission and that such choice to be made by a candidate under this rule was subject to such restrictions as the Election Commission may think fit to impose in that behalf. By notification No. 32/1/51 Elec. 11(2), dated the 8th September, 1951 the Election Commission of India published a list of 25 symbols and it was definitely stated in the said notification that no candidate shall choose except with the permission of the Returning Officer, specified in items 1 to 11 of the above list. All the three symbols standing lion, Rising Sun, and Elephant are included in the list at No. 3, 7 and 8 and that consequently without the permission of the said Returning Officer, no such symbols could be selected and in the present case no such permission was ever sought or granted. In this way the mandatory provisions of the Rules and the notification were disregarded by the petitioner and the Returning Officer was absolutely within his jurisdiction in rejecting his nomination Form which was submitted.

In the end, Respdt. No. 1 has also pleaded that in addition to the ground of the rejection of the nomination paper as given by the Returning Officer, the nomination deserved to be rejected on the following further grounds:—

- (1) The petitioner was not an official candidate of the Ram Rajiya Parishad and consequently he could not select the symbols of the Rising Sun was a candidate belonging to Scheduled Castes Federation or the Forward Bloc and consequently he could not select any symbol of Elephant or the Standing Lion.
- (2) Mr. Mohan Lal who is the proposer and whose name is alleged to be at No. 615 of the Electoral Role of Todarai Singh village never signed as a proposer.
- (3) Under Section 40 of the Representation of People Act, 1951 every person nominated as a candidate for election shall before the delivery of his nomination paper under Section 33(1) appoint in writing either himself or some other person to be his Election Agent and that in the present case no such appointment in writing was made by the petitioner.

The above pleadings of the contesting parties have resulted in the following issues being framed:—

1. Are Shri Narainsingh and Shri Ratanlal necessary parties to the Election Petition?
2. Has petitioner's Nomination paper been improperly rejected by the Returning Officer and if so, with what effect?
3. Has proposer Mohan Lal failed to sign the petitioner's nomination paper, had the petitioner failed to appoint his election agent, and so, could the petitioner's nomination paper be rejected on these two grounds?
4. To what relief, if any, is the petitioner entitled?

#### FINDINGS

**Issue 1.**—This issue has not been pressed before us on behalf of the contesting Respondents Nos. 1, 7, 4, nor has it been proved by them that Shri Narain Singh and Shri Ratan Singh were duly nominated candidates. In fact, the nomination paper at pages 60 and 61 shows that the former's nomination was rejected and there is no proof that the latter was ever nominated. We accordingly decide the issue in the negative.

**Issue 2.**—The petitioner has filed two nomination papers which have been exhibited as IV and II and form the subject matter of controversy under the present

issuc. In both of them, the petitioner had chosen the following three symbols in order of preference:—

- (1) Rising Sun,
- (2) Elephant,
- (3) Lion.

It may be noted that the Rising Sun was the party symbol of the Ram Rajya Parishad, Elephant that of the All India Scheduled Castes Federation and Standing Lion (not Llon) that of the All India Forward Block-Marxist Group. According to Ex. VIII, the petitioner was the candidate of the Ram Rajiya Parishad and so the choice of the first symbol was all right and that of the second one wholly wrong. The third choice of the 'Lion' was both a misdescription and a wrong choice.

Rule 5(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, requires that every nomination paper delivered under Sub-Section (1) of Section 33 of the R.P. Act of 1951 shall be accompanied by a declaration in writing specifying the particular symbol which the candidate has chosen for his first preference out of the list of symbols for the time being in force under sub-rule (1) and also specifying two other symbols out of that list which he has chosen for his second and third preferences respectively and the proviso to the aforesaid sub-rule lays down that the choice to be made by a candidate under this sub-rule shall be subject to such restrictions as the Election Commission may think fit to impose in that behalf. The relevant restrictions as contained in the Election Commission's Notification No. 32/1/51-Elec.II(2), dated the 8th September, 1951, Gazette of India Extraordinary, 1951, Part I, Sec. 1, p. 256, are that none of the three symbols as preferred by the Petitioner could be chosen except with the permission of the Returning Officer. The notification does not, however, prescribe any special form in which the permission could be taken and under the law as it now operates, the final selection or allotment of the symbol has been left to the discretion of the Returning Officer (*vide*, Rule 10 of the above Rules) and Form of Nomination Paper at the end of which there is a note to this effect: "The symbol assigned to the candidate is . . . . ."

Returning Officer  
Assistant Returning Officer

Therefore, it can safely be argued that the selection of a symbol by a candidate is not binding upon him, and so, that mere fact that the declaration regarding specification of symbols was not correctly made, is not a material irregularity under the present law. We are supported in this conclusion by the two Press Notes Exs. VII and VI. The first Press Note says that the first preference of the candidate should be for the symbol already reserved for his political party by the Election Commission, India or the Chief Electoral Officer and his second and third preferences should be for two other symbols out of such of the symbols as have not been reserved in the State already for any other party, and, the second Note declares that a candidate may, through ignorance or carelessness, fail to mention more than one symbol in his nomination paper and that defect is minor and should be overlooked.

In the present case, in so far as, according to Ex. VIII, the petitioner was a Ram Rajya Parishad candidate, his first preference for the 'Rising Sun' was proper but his second and third preferences were certainly wrong. This wrong choice of the last symbols cannot be regarded as worse than total omission of them and so, in view of Ex. VI, the defect was minor should have been overlooked. The Returning Officer was not therefore justified in rejecting the Petitioner's nomination paper [*vide*, Sec. 36(4) of the R.P. Act, 1951].

Now, the next question to be determined under this issue is as to how the rejection of the Petitioner's nomination paper has affected the election: In other words, or in the relevant language of Sec. 100(c) of the R.P. Act, 1951, has the result of the election been materially affected by the improper rejection of the nomination.

There is no doubt that if a nomination is improperly rejected the presumption is that the result of the election has been materially affected (Indian Election Cases by Sen and Poddar 1951 Ed. p. 66). This presumption is certainly strong as the whole electorate, is deprived of its right to exercise franchise in favour of the candidate of its choice. There is also no doubt that this presumption has to be rebutted by a very strong and convincing evidence [*vide* (1) Ferozpur East (Sikh) Rural Constituency, Sardar Bassant Singh Vs. Sardar Rattan Singh, page 80, (2) Punjab Anglo-Indian Constituency (Case No. 1) Mr. E. Few Vs. Mr. C. E.

Gibbon, page 247, (3) Punjab Anglo-Indian Constituency (Case No. 2) Mr. S. R. Lewis Vs. Mr. C. E. Gibbon, page 259, (4) Amritsar Central (Sikh) Constituency Sardarni Prakash Kaur Vs. Rai Bahadur Basakha Singh, page 332, Volume I of Doabias Election Cases 1935 to 1950 and (5) Multan Division Towns (Mohammadan) Constituency, (Case No. 2) Syed Zain-ul Abidin Shah Vs. Khan Sahib Sheikh Muhammad Amin, reported at page 302, (6) Moradabad District (North West) Mohammadan Rural Constituency, Bashir Armed Vs. Akhtar Hussain Khan, reported at page 341, (7) Basti District (North East) General Rural Constituency, Kalapraj Vs. Pt. Bishambhar Nath Tripathi, report at page 355, and (8) Sitapur District (East) General Rural Constituency, Babu Jagan Nath Prasad Vs. Raja Maheshwar Dayal Seth, reported at page 217, volume II of the same book]. But in none of these cases the view was taken that the presumption was altogether irrebuttable. In the case of Shri Hansraj Vs. Shri Ram Singh and others being Election petition No. 2 of 1952, reported on page 2551 of the *Gazette of India Extraordinary* Part I, dated 19th November 1952, the Delhi Tribunal observed that they could not conceive of any legal evidence which could assist them in finding what could have happened if the nomination had not been rejected. Subsequently, in Brij Naresh Singh Vs. Hon'ble Thakur Hukam Singh (Election Petition No. 208 of 1952) reported in the *Gazette of India Extraordinary* Part II—Sec. 3, No. 174, dated 20th December 1952, page 1629, the Lucknow Tribunal held that the presumption was incapable of rebuttal and any attempt to rebut it would only lead to nothing but speculation. But with due deference to the Delhi and Lucknow Tribunals, we hold that the conclusion arrived at is not acceptable to us, because, it is not in keeping with the grammatical and literal construction of the wordings of Sec. 100(1) (C) of the R.P. Act of 1951, according to which, even in case of an improper rejection of nomination, it is necessary to determine as to whether or not the result of the election has been materially affected. We are supported in this view by the following recent decisions of the Election Tribunal:—

- (1) Chander Nath Vs. Kunwar Jaswant Singh and others (Election Petition No. 226 of 1952), published in the *Rajasthan Gazette Extraordinary* Vol. 4 No. 183, dated 1st February 1953, page 983, Election Tribunal, Bikaner.
- (2) Prem Nath Vs. Ram Kishan (Election Petition No. 232 of 1952), published in the *Gazette of India Extraordinary* Part II Section 3, No. 173, dated 19th December 1952, page 1017 Election Tribunal, Jullundar.
- (3) Pt. Harish Chandra Vs. Raja Mansingh and others (Election Petition No. 6 of 1952) published in the *Gazette of India Extraordinary*, Part II—Sec. 3, No. 96, dated 14th April 1953, at page 1455 Election Tribunal Jaipur.
- (4) Vijay Mohan Reddy Vs. Page Pulla Reddy and others (Election Petition No. 1 of 1952) published in the *Gazette of India, Extraordinary*, Part II—Sec. 3, No. 6, dated 8th January 1953, page 45 Election Tribunal Secunderabad, Deccan.

Therefore, in view of our definite finding as based on the above four decisions that the presumption is rebuttable, we have to decide as to whether or not the contesting respondents Nos. 1 & 4 have been able to rebut the presumption raised by the improper rejection of the Petitioner's nomination and have been able to establish that the result of the election has not been materially affected.

There is not only no oral evidence on behalf of the Petitioner in support of the above presumption, but, whatever evidence there is, does not seem to give him any good credentials. On his own admissions, he was a Tehsildar at Toda Rai Singh for a period of about 4 years and was dismissed in or about the year 1936 apparently on charges of bribery. He became a member of the Ram Rajva Parishad only 2 or 3 months before he filed his nomination papers and in preference to him Kunwar Narain Singh had been already originally chosen as a candidate by the Parishad. Even his nomination by the President of the Parishad was not above board, because, the president was indebted to him in the sum of Rs. 1,000 to 1,500. He has been doing political work, if any, only for the last 3 or 4 years.

But, as compared to the petitioner we find that Respd. No. 1 holds a much superior social and political status. He has been practising as an Advocate at Malpura since the year 1933 and had been the President of the Malpura Praja Mandal since 1937. He was elected as a member of the Municipal Board at Malpura in 1944 and has been working as Chairman thereof since 1946. He was an elected candidate for the Jaipur Legislative Council for the years 1945 to 1949 and from 1947 to 1949 he acted as the Vice Chairman of the District Board at Malpura. In 1948 he acted as President of the Reception Committee of the Jaipur Praja Mandal Session which took place at Malpura. He has also worked as the

President of the Tonk District Congress Committee for 3 months in 1950-51 and part of 1952 and since 1947 he has been a member of the Provincial Congress Committee. He is a resident of Malpura itself while the Petitioner resides at Jaipur which is 59 miles off.

The above facts go to show that on the fact of it, the Respd. No. 1 should have decidedly carried much more social and official & political influence than the Petitioner, who was, more or less, a non-entity in Malpura and this seems to be the reason why this Respondent secured 12,462 votes as against the next best candidate Respd. Pannalal who got only 8,985 votes (*vide* statement at page 279 of the record) in spite of the fact the Petitioner himself supported him (*vide* R.Ws. 2 and 10). In these circumstances, we do not find it difficult to believe the evidence of Respd. No 1's apparently respectable witnesses R.Ws. 4, 5, 7 to 9 and 11 to 19 that the Petitioner could possibly have no chance of success at the election as against Respd. No. 1. This evidence seems to be more correct than speculative. We accordingly hold that the election has not been materially affected by the rejection of the Petitioner's nomination paper.

*Issue 3.*—Respondents 1 to 4 have not pressed this issue nor have they led any evidence on it (*vide* ordersheet dated 3rd February 1953). The issue is accordingly decided against them.

*Issue 4.*—In view of our decision on Issue 2 we hold the petition is entitled to no relief.

#### ORDERED

Let the election petition be dismissed but since the petitioner has been able to establish that his nomination paper was improperly rejected, we order that the contesting parties *viz.* Petitioner and Respondents 1 and 4 shall bear their own costs.

The 30th June 1953.

(Sd.) P. D. PANDE, *Chairman.*

(Sd.) J. P. MATHUR, *Member.*

(Sd.) BISHAN S. DARBARI, *Member.*

[No. 19/229/52-Elec III/10992.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*